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Supreme Court of the United States.

OCTOBER TERM, 1944.

No. 281.

SAMUEL SANDBERG ET AL.,

Petitioners,

v.

NEW ENGLAND NOVELTY CO., INC.

BRIEF OF CIVIL LIBERTIES UNION OF MASSACHUSETTS, AMICUS CURIAE, IN SUPPORT OF PETITION FOR REHEARING ON PETITION FOR CERTIORARI.

The Civil Liberties Union of Massachusetts files this brief in support of the petition for rehearing on the petition for certiorari because of its opinion that the issues involved are of the utmost importance and concern the public welfare. No statement of the facts is herewith inserted, because the Amicus believes that the same have been substantially set forth in the record and in the petition for certiorari.

By the denial of the petition for certiorari in this case the Court has left the law in Massachusetts in great conflict.

The law relative to peaceful picketing has been clearly adjudicated in this Court.

Cafeteria Employees Union v. Angelos, 320 U.S. 293.

This Court has never adhered to the view that the mere presence of pickets constituted coercion. By the very terms of the restraining order an attempt was made to limit the order so that there would be no violation or interference with the constitutional rights of free speech and free press.

The restraining order in part read as follows:
"There is no attempt hereby to limit the statutory or constitutional rights of either party to peacefully persuade or exercise their rights of free speech and of free press."

Yet the interpretation given by the Supreme Judicial Court clearly amounts to such a violation. The facts were clear. There was no evidence that anyone was disturbed, threatened, or in any way interfered with. The instructions given by the trial court to the effect that the jury could find molestation, intimidation, and threats from the mere presence of peaceful pickets was certainly in error. Apparently it mattered not how near nor how far from non-strikers these pickets were. This interpretation runs directly contrary to the decisions of this Court.

Hague v. C.I.O., 307 U.S. 496.

The right to gather upon the public ways, however not to the inconvenience of the public, is the people's, as the

streets are the proper place for the dissemination of information and opinion.

Lovell v. Griffin, 303 U.S. 444.

Carlson v. California, 310 U.S. 106.

There was no evidence of public inconvenience. Present is a clear, judicial encroachment of constitutional guaranties.

The fact that this case arises out of the violation of a court order ought not dissuade the court from granting review of the validity of that court order. These defendants were tried for criminal contempt. There cannot be any contempt on an invalid or void order or on the application of an invalid or void order.

In *Thomas v. Collins*, Supreme Court, Oct. Term 1944, Docket No. 14, this Court granted review and heard arguments on the merits of an appeal from contempt proceedings where the petitioner did not comply with the restraining order.

In *Lovell v. Griffin*, 303 U.S. 444, this Court held that it was not necessary to apply for a license to distribute literature where the requirement of a license was contrary to constitutional guaranties. The issue could be raised without showing that the license had been applied for and had been denied.

Substantial issues have been raised by affirmance of the trial court's ruling. Denial of certiorari means simply that Massachusetts has a law unto itself which cannot be overturned even though contrary to the Federal Constitution and the decisions of the Supreme Court. Denial of certiorari will further encourage the Supreme Judicial Court to continue along the same line that it has in the belief that its decisions are correct.

The right to picket peacefully is so essential, not only for the benefit of labor but also for the benefit of the public, that it needs no further discussion. It is unwise to allow the present conflicting interpretations and applications of the law to stand.

As Amicus Curiae the Civil Liberties Union of Massachusetts urges the Court to grant this petition for rehearing on the petition for certiorari and to grant certiorari.

Respectfully submitted,

CIVIL LIBERTIES UNION

OF MASSACHUSETTS.

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